

EXHIBIT 34

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

----- :
ULTIMA SERVICES CORPORATION, :
 :
Plaintiff, :
 :
vs. : Case No. :
 : 2:20-cv-00041-
U.S. DEPARTMENT OF AGRICULTURE, : DCLC-CRW
et al., :
 :
Defendants. :
----- :

REMOTE DEPOSITION OF DANIEL CHOW

DATE: March 10, 2022
TIME: 10:06 a.m.
LOCATION: Rockville, Maryland
REPORTED BY: Shari R. Broussard, RPR, CSR
Reporter, Notary

Veritext Legal Solutions
1250 Eye Street, NW, Suite 350
Washington, D.C. 20005

A P P E A R A N C E S

On behalf of Plaintiff:

MICHAEL E. ROSMAN, ESQUIRE
MICHELLE A. SCOTT, ESQUIRE
Center for Individual Rights
1100 Connecticut Avenue, Northwest
Suite 625
Washington, D.C. 20036
(202) 833-8400
rosman@cir-usa.gov

On behalf of Defendants:

CHRISTINE DINAN, ESQUIRE
JULIET GRAY, ESQUIRE
ANDREW BRANIFF, ESQUIRE
Department of Justice
Civil Rights Division
Employment Litigation Section
150 M Street, Northeast
Washington, D.C. 20530
christine.dinan@usdoj.gov
juliet.gray@usdoj.gov
andrew.braniff@usdoj.gov

ALSO PRESENT:

Josephine Arnold, Esquire, MBDA

C O N T E N T S

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(* Exhibits attached to transcript.)

1 thing.

2 Q Okay. So to get in the SAM database,
3 does a company need to do anything more than
4 simply register for it?

5 A That's my understanding, yes.

6 Q Okay. What kinds of information about
7 the company other than the two or three things
8 that you just identified, what kinds of
9 information does it contain about the company?

10 A It also contains their -- not only their
11 business info but their -- their CAGE codes, their
12 DUNS numbers, mostly administrative data, that
13 sort of thing.

14 Q Can you just explain what a CAGE code
15 is?

16 A A CAGE code is a government identifier.
17 I believe it's a number used to identify -- simply
18 to uniquely identify a company. I think it was
19 used by the Department of Defense several years
20 ago. It is -- it is used to help identify
21 companies.

22 Q CAGE stands for Commercial and

1 speculation.

2 MR. ROSMAN: I asked if he knows.

3 THE WITNESS: My best guess is that SBA
4 does some minimum level of checking to ensure that
5 the data is consistent, that there are no mistakes
6 in the submitted data, but I'm not aware of any
7 federal agency that checks this data -- any other
8 agency.

9 BY MR. ROSMAN:

10 Q Does the SAM database have information
11 about a company's number of employees?

12 A I believe so, yes.

13 Q Does it have information about a
14 company's annual revenues?

15 A I -- I'm not sure. It is possible. I'd
16 have to recheck that.

17 Q Okay. Do you know if there is any fee
18 for registering in the SAM database?

19 A I don't believe there is a fee.

20 Q So for the company it is essentially
21 free; is that right?

22 A To my understanding, yes.

1 to get at that three-digit code.

2 Q No, I think I understand it. Okay. I
3 think we sort of understand each other now.

4 Does the FPDS database identify which
5 agency awarded a specific contract?

6 A I don't know the answer to that. I
7 didn't look at that that deeply as -- as to
8 whether that occurred and with the variables that
9 I was given, which may be a subset of all the
10 possible variables for the FPDS, I did not see a
11 particular field for agency.

12 Q Okay. So you didn't do any specific
13 analysis for the Defendant, U.S. Department of
14 Agriculture; is that right?

15 A Correct.

16 Q Okay. I'm going to ask some questions
17 about both databases now. I asked this about I
18 think the SAM database before, but let me make
19 sure I understand.

20 Did either of the databases -- let's
21 just say any of the data- -- did any of the
22 databases tell you whether a registrant had bid on

1 a federal contract and not received it?

2 A I have no knowledge of whether they bid
3 or did not bid on a contract. What I do --

4 Q Okay.

5 A What I do have is -- what I do have is
6 some count of contracts, but I don't have any bid
7 data as far as I know. I've not seen anything
8 called bid.

9 Q Is there anything in either of the two
10 databases or any of the databases that you looked
11 at which would tell you whether a specific
12 registrant was eligible to bid on a contract?

13 A No. I didn't look at -- I did not see
14 any field that talked about eligibility criteria
15 for bidding.

16 Q Okay. Were there any entries in the
17 FPDS database that provided contract data that did
18 not match up with a registrant in the SAM
19 database?

20 A No, I did not look so deeply, but we --
21 I used the DUNS number or CAGE code to match
22 registered firms with their counterpart in the

1 A Yeah. Perhaps, as an example, that firm
2 didn't report enough of its variables or that they
3 didn't re- -- register or recertify or they had
4 like a strange outlier variable. Maybe they had
5 an employment of 10 million or something. Yeah,
6 those kinds of things.

7 Q Okay. Anomalous entries; is that fair?

8 A That's fair to say. I call them
9 outliers.

10 Q Outliers is good too. Yes, thank you.
11 Okay.

12 So this Table 1 does not include all
13 minority-owned companies though; is that right?

14 A Correct. There is a "not classified"
15 entry here. It was somehow marked as minority,
16 but we could not -- I could not attribute it to
17 one of the subcategories of Black, Hispanic, Asian
18 Pacific, and so forth.

19 Also the -- for the data, in response to
20 your question, in the data that I was provided,
21 you have to remember that is a sample based on
22 SBA, it is not a universal -- it is not a list of

1 A Yes. Correct. As seen in Table 3, that
2 I have woman-owned and minority-owned odds ratios.

3 Q Right. But I guess what I was asking
4 was this: Did you assess whether .899 was
5 statistically significantly different from .858?

6 A No, I did not. That would have required
7 a different type of study all together.

8 Q Okay. Okay. So let me just ask you a
9 few questions about Tables 4 and 4a.

10 Table 4 gives us the odds of non-8(a)
11 SDBs and these would include SDBs that are owned
12 by non-minorities; is that right?

13 A Yes.

14 Q Okay. And you didn't do any separate
15 analysis focusing solely on minority-owned
16 non-8(a) SDBs; is that right?

17 A Correct, just minority in Table 4a.

18 Q Right. Right. So let's move to
19 Table 4a.

20 MR. ROSMAN: I'm sorry, I'm going to
21 have to ask the reporter to read back the last
22 question and answer.

1 (The reporter read the record
2 as requested.)

3 BY MR. ROSMAN:

4 Q So in Table 4a we have the odds that
5 minority-owned businesses had. And if I
6 understand this correctly, a little over half had
7 lower odds statistically although the majority of
8 that was not statistically significant and a
9 little under one-half had higher odds than the
10 average, but most of that was not statistically
11 significant.

12 Did I read that right?

13 A I'm -- I'm sorry, I'm not following you.
14 Are you at Table 4a?

15 Q I am. So I'm looking under "Contracts,"
16 right, and we're looking at whether or not
17 minority-owned businesses had lower odds of
18 winning contracts or higher odds of winning
19 contracts, right? And what I surmise from your
20 table is that for a bit over half of the contracts
21 minority firms had lower odds of obtaining the
22 contract and for a bit less than half of the

1 contracts minority-owned firms had higher odds
2 although in both cases the lower odds and higher
3 odds were primarily not statistically significant.

4 Did I read that right?

5 A I think -- I think what you meant for
6 the -- for the category of lower odds -- did you
7 mean 63 percent or 66 to 67 percent, not
8 50 percent?

9 Q No. I was looking under "Contracts" not
10 "Awards."

11 A Yes, I agree with your statement.

12 Q Okay. So when you did that analysis,
13 how would you determine what the odds ratio was on
14 a particular contract?

15 A Okay. Table 4a is a more aggregate
16 approach, it would not tell me -- it should not
17 indicate what the odds are of winning a particular
18 contract. As you can see the three categories of
19 Industries, Awards and Contracts, these are gross
20 numbers and not particular contract types or
21 particular contracts for a given firm.

22 Q Okay. So then let me ask this next

1 question, which is where it says that 16.9 percent
2 of the contracts had lower odds that were
3 statistically significant, how should we interpret
4 that number?

5 A Okay.

6 Q I mean you have a specific number of
7 contracts, 50,249, right?

8 A Okay. Yes. So 16.9 percent means out
9 of all of the contracts of the 297,535, 50,249
10 were in the category of lower odds that -- that
11 statistically significant and that 50,249
12 represents 16.9 percent of all the 297,535. It is
13 just a percentage figure.

14 Q Well, I understand, but I'm asking where
15 the 50,000 comes from?

16 A Right. So the 50,000 comes from a piece
17 of the code that takes the p-values and looks --
18 and divides them into these four categories you
19 see here and those p-values are associated with
20 the number of contracts and a dollar award amount
21 by industry. So as a -- as a whole, this is a
22 tabulation essentially.

1 Q Okay. So we shouldn't interpret this
2 table to mean that there was 21,195 contracts
3 under study where minority-owned firms had higher
4 odds that were statistically significant; is that
5 right?

6 A Could you please repeat that question.
7 I was looking at my data.

8 Q We shouldn't take Table 4a to mean that
9 there were 21,195 specific contracts for which
10 minority-owned businesses had higher odds that
11 were statistically significant?

12 A Well, you should understand that there
13 are 21,195 contracts representing 7.1 percent of
14 all the contracts in this sample study that
15 were -- that had higher odds but were not
16 statistically significant.

17 Q Were not?

18 A I'm sorry. Higher odds were
19 statistically significant, yes. I looked at the
20 wrong line.

21 Q Okay. All right. So -- okay. Then I
22 was wrong.

1 So these do represent numbers of
2 contracts for which the various categories you've
3 identified are true, right?

4 A Yes, these are the results.

5 Q Okay. Did you do any analysis by
6 individual racial groups or ethnic groups?

7 A Can you please explain a bit further.

8 Q Well, did you do odd ratios for African
9 American-owned firms, for example?

10 A No, I did not.

11 Q Did you do odds ratios for
12 Hispanic-owned firms?

13 A No, I didn't do that.

14 Q Okay. Is there any way to tell from
15 your analysis whether the lower odds ratios for
16 minority-owned firms generally reflects
17 particularly low odds for one specific ratio or
18 ethnic minority?

19 A These results are aggregative and not
20 done by that level of breakout, so I would not
21 venture to guess how the odds ratios would
22 distribute themselves among those specific race

1 and ethnicity categories.

2 Q Okay. Did you do any analysis to
3 determine why minority-owned firms had lower odds
4 ratios?

5 A Not for this study, no, I -- I did not
6 get into that level of detail.

7 Q Well, do you have an expert opinion as
8 to whether you can attribute the lower ratios that
9 you found through discrimination by a particular
10 actor?

11 A "By a particular actor." Can -- can you
12 clarify that?

13 Q Sure. Let's use the Federal Government
14 as our particular actor.

15 Do you have an expert opinion as to
16 whether or not your study of lower ratios can be
17 attributed to discrimination by the Federal
18 Government?

19 A No.

20 Q Okay. And if I understand the analysis
21 correctly, one variable that was not used was
22 failure to bid, right?

1 A Correct, I have nothing in here about
2 bidding.

3 Q Okay. And so some of these odds might
4 be attributable to the fact that different groups
5 bid less often or more often?

6 A Might be attributable, yes.

7 Q Okay. There's nothing in your analysis
8 that would eliminate that possibility; is that
9 right?

10 A Correct.

11 Q Okay.

12 MR. ROSMAN: So, Christine, I'm not too
13 far from being done, but if you have a significant
14 amount of cross, then maybe we should take lunch
15 now and then come back and finish up in an hour or
16 so. I just wanted to take your opinion about
17 that.

18 MS. DINAN: I'm not sure. I need to
19 look at my notes and I'd like to take a break
20 regardless before we do the cross, so the question
21 is whether you want to finish up and then take a
22 break or you want to take a break now.

1 Q Well, okay, but I asked whether that
2 meant they were two and-a-half times more likely?

3 A I would say so, yes.

4 Q Okay. And in an earlier part of your
5 report on page seven you say, "The odds of winning
6 a contract for SDBs who do not participate in the
7 8(a) program is about 37 percent less than for
8 other firms." And I just want to make sure I
9 understand who the other firms are in this
10 context.

11 A Okay.

12 Q Would the other firms be 8(a) firms,
13 non-SDB firms, minority-owned firms that are not
14 SDB firms? Is all of that in your calculation
15 there?

16 A Yes. This -- this result says that SDBs
17 that are not 8(a) are -- have odds ratios that are
18 less than one given that the other types of
19 firms -- in this case the other categories, the
20 8(a)s, the minority-owned, the women-owned, et
21 cetera -- are accounted for.

22 Q Okay. So the other firms in your

CERTIFICATE OF NOTARY PUBLIC

I, SHARI R. BROUSSARD, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn by me; that the testimony of said witness was taken by me in stenotype and thereafter reduced to typewriting under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

SHARI R. BROUSSARD

Notary Public in and for the
District of Columbia

My commission expires:

August 14, 2025

Veritext Legal Solutions
1250 Eye Street, Northwest
Suite 350
Washington, D.C. 20005
(202) 857-DEPO

E R R A T A S H E E T

Case Name: Ultima Services Corporation vs. U.S.
Department of Agriculture, et al.

Witness Name: DANIEL CHOW

Deposition Date: Thursday, March 10, 2022

Job No.: 5117567

| Page No. | Line No. | Change/Reason for Change |
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See attached declaration

05/17/2022

Signature

Date

DECLARATION OF DANIEL CHOW

1. My name is Daniel Chow. I am over 18 years of age and a resident of Rockville, Maryland.
2. I am employed as a Senior Economist with the U.S. Department of Commerce, Minority Business Development Agency.
3. I prepared an expert report on behalf of the Defendants in *Ultima Services Corporation v. U.S. Department of Agriculture, et al.*, Case No. 2:20-cv-00041-DCLC-CRW, which was finalized on February 7, 2022 [hereinafter “expert report”].
4. As I describe in the “Data Availability” section on page three of my expert report, I was provided with several datasets by the Small Business Administration (SBA) in order to complete my analysis: one dataset from SAM.gov, and two datasets from the Federal Procurement Data System (FPDS), one for small businesses and one for non-small businesses.
5. The dataset from SAM.gov contains 7,466,447 observations and 42 variables. It was contained in a file labeled “SAM_1904_2009_SB_D.”
6. As I describe in my report, I combined the two FPDS datasets and removed redundant and extraneous observations to create one file which contains 5,659,740 registration observations and 64 variables. This file was labeled “Awards_Combined_FY19FY20_SBNonSB.”
7. I then merged the combined FPDS dataset with the SAM.gov dataset and collapsed, sorted, matched, and removed duplicates to create a file that contains 1,259,129 observations and 50 variables. This file is labeled “FPDS_SAM_PPIRS_2019_2020_matching_Test4.”
8. On March 10, 2022, I was deposed by Plaintiff’s counsel, Michael Rosman.
9. In responding to questions from Mr. Rosman about the merging of datasets, I mistakenly agreed that I had combined the 42 variables from the SAM.gov dataset with the 55 variables from the FPDS dataset, resulting in a merged dataset that contained approximately 5.6 million observations and 64 variables, *see* Chow Deposition, 50:4-11, 59:12-61:15, when in fact, the dataset that contains approximately 5.6 million observations and 64 variables consists only of combined FPDS data, not SAM.gov data.
10. There were several steps in my analysis in which I combined datasets. Without the benefit of the documents and datasets that I relied upon to complete my analysis in front of me during the deposition, I could not recall with exact specificity the number of observations in each combined dataset or the titles of each file containing the relevant

datasets, and I misspoke. I did not intend to cause any confusion in explaining my process.

11. Before my expert report was produced to Plaintiff's counsel, it was peer reviewed by Elizabeth Perlman, Ph.D., Economist at the Center for Economic Studies, U.S. Census Bureau. Dr. Perlman concluded that my methodology and statistical analysis were sound.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 05/17/2022.

Daniel Chow